

Alvin B. Galuten, MD, PSC,	)	
	)	Civil Action No. 10-cv-155-SM
Plaintiff	)	
	)	
Medicus Radiology Staffing, LLC,	)	
	)	
Defendant	)	
	)	

## I. Introduction

2. As to Plaintiff's claim under 358-A claim, however, the New Hampshire Supreme Court has held that the Act is equitable in nature and a party is "not entitled to a trial by jury." Hair Excitement, Inc. v. L'Oreal U.S.A., Inc., 158 N.H. 363, 370, 965 A.2d 1032, 1038 (2009). Applying the express holding of Hair Excitement, Plaintiff's jury demand should be stricken as to his claim for violation of the Act.

1

4. The New Hampshire Supreme Court noted that the purpose of RSA 358-A is to “ensure an equitable relationship between consumers and persons engaged in business,” a right which “did not exist in New Hampshire common law in 1784.” Id. (quoting Hughes v. Disalvo, 143 N.H. 576, 578, 729 A.2d 422 (1999)). Claims under RSA 358-A are also equitable in nature and therefore should be decided by a judge, not a jury.

5. The plain language of RSA 358-A also indicates that claims brought under the Act are to be tried by a court, not a jury. See RSA 358-A:10 (“Any person injured by another's use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or \$1,000, whichever is greater.”) (emphasis added).

6. The New Hampshire Legislature certainly could have created a right to a jury trial when adopting RSA 358-A. The fact that the Legislature did not do so indicates its intention that such claims should be tried to the Court.

7. A memorandum of law is submitted herewith.

Respectfully submitted,

**MEDICUS RADIOLOGY STAFFING, LLC**

**By Their Attorneys,**

**SHEEHAN PHINNEY BASS + GREEN,  
PROFESSIONAL ASSOCIATION**

Dated: April 18, 2011

By: /s/ David W. McGrath  
David W. McGrath (#9347)  
James P. Harris (#15336)  
1000 Elm Street, P.O. Box 3701  
Manchester, NH 03105-3701  
(603) 627-8255  
dmcgrath@sheehan.com

**Certification of Service**

I hereby certify that on this 18th day of April, 2011, I electronically filed the foregoing with the Clerk of the United States District Court for the District of New Hampshire, using the CM/ECF system, which will send notification to the following counsel of record:

Mark E. Howard  
Howard & Ruoff, PLLC  
1850 Elm Street  
Manchester, NH 03104  
(603) 625-1254  
mhoward@howardruoff.com

/s/ David W. McGrath  
David W. McGrath